

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH, JAIPUR.

**

J U D G M E N T

O.P.Bhargava Vs. State of Raj. & ors.

D.B.CIVIL WRIT PETITION
NO.5580/03

Date of Order : February 01, 2006.

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.O.P.Bhargave, present in person.
Mr.R.N.Mathur, for the respondent-Corporation.

BY THE COURT: (PER HON'BLE KOTHARI, J.)

- 1.The anguish of retired employees of Rajasthan Financial Corporation about non-availability of medical facility or rather reimbursement of medical expenses incurred by them in their old age after retirement from service of Corporation, RFC hereinafter, was expressed in the form of Public Interest Litigation, and letter petition was addressed to one of the Hon'ble Judges of this court on 4.9.03 which was treated as letter petition, and the respondents were called upon to file their replies to the notices issued by this court.
2. The respondent State and the RFC both filed their replies, to which counters were filed by the petitioner, and the matter was finally heard by us on 2.1.06.

3. Mr.O.P.Bhargava, leading the team of about 100 retired employees of Corporation claimed in this petition that, since the pension holders of the State Government get medical facilities or reimbursement of medical expenses, they should also at par, receive similar benefit from the respondent Corporation. The Rajasthan Financial Corporation is a Corporation constituted under Sec. 3 of the State Financial Corporation Act with an object to provide financial assistance to various Industrial Units for setting up their industry in the State of Rajasthan. It framed "Rajasthan Financial Corporation Employees Pension Regulations, 1990" w.e.f. 1.4.1987 when an option under Cl.7 was given to the employees of the RFC who was subscribing to the Corporation contributory Provident Fund to switch over to the pension scheme. Later on, however the said pension scheme appears to have been withdrawn by the Corporation w.e.f. 12.8.2004. The petitioner and other like employees are said to have opted for this pension scheme during the period when it was in force and now through this letter petition, they claimed that like in-service employees of the Corporation who are entitled to medical facilities, they should also be given similar benefits or medical facilities.

4. During the course of arguments, the petitioner appearing in person, however candidly admitted before us that there is no specific rules, regulations or scheme in force framed or enacted by the respondent Corporation providing for such medical facilities or reimbursement for retired employees, yet the petitioner urged that the respondent Corporation should be directed by this court to provide such medical facilities to the retired employees of respondent Corporation.

5. Sh.R.N.Mathur, learned counsel appearing for the respondent Corporation, vehemently opposed this request, and submitted that it is a policy matter and in the absence of any policy or provision applicable to the petitioner or his likes, this court cannot issue any such direction in the nature of mandamus or otherwise in exercise of its powers under Art. 226 of the Constitution of India to frame any such scheme or to provide such facilities to the retired employees. He further submitted that at one point of time, the Board of Directors of the respondent Corporation had undertaken the exercise at one point of time for framing such scheme for providing medical facilities to the retired employees of the Corporation vide Annex.P-1 dated 30.5.1996, and matter was placed before the Board of Directors for consideration and approval, but later on due to financial constraints and variety of other reasons, the said proposal was dropped, and as of now, no such scheme or regulation for providing medical facilities or reimbursement of medical expenses to the retired employees of RFC, is in force.

6. It would be apposite here to reproduce from RFC's document Annex.R-2/10 as under:

" The minutes of the Board meeting dt. 30.5.96 is annexed as Annex.B. According to the decisions of the Board, actions were required to be taken by the State Government and the Corporation. The action to be taken by the Corporation was to first explore the possibility of medical insurance to cover the cost of treatment both for the serving as well as retired employees. The action to be taken by the Government was to negotiate with the Insurance Companies for a common scheme for the employees of all the Corporation of the State.

Accordingly, the Corporation wrote letters to Insurance Companies viz. The New India Assurance Company Limited, National Assurance Company Limited, United India Assurance Company Limited and after receipt of the reports from the said companies, it has been observed that medical reimbursement through Insurance Companies is not viable on the following grounds:-

- i)The premium would be very high.
- ii)Limited coverage allowed.
- iii)Many diseases were to be excluded.
- iv)There are further sub-limits for reimbursement of different expenses.

A step further, the Corporation has also enquired from the other PSUs are the Rajasthan State Warehousing Corporation, Rajasthan Small Scale Industries Corporation, Rajasthan Road Transport Corporation, JDA, Seed Corporation, Rajasthan State Ganganagar Sugar Mills and RTDC Limited and according to their information they are not providing such facilities to their retired employees. The information is to be updated.

As regards the action taken by the Government, we have been given to understand that they have not issued any instructions to the PSUs with regard to medical reimbursement facilities to their retired employees.

After exploring the possibilities of medical insurance and not finding the same viable for reasons stated in pre paras, the matter was placed before CMD for placing again proposals before the Board for consideration, but the same was deferred for the reason that Corporation was studying the impact of CPF and Pension Liability and its outcome was yet to come.

Since then, Corporation got a study of the viability of Pension Scheme conducted through Sh.J.M.Vyas,

Chartered Accountant and placed a note before the Board. The matter is presently pending with the State Government for guidance on legal issues. However, Corporation is of the view that Pension Scheme is not viable for it.

Meanwhile the Rajasthan High Court Bench at Jaipur has accepted a public interest litigation filed by Shri O.P.Bhargava, Retired General Manager against the State and RFC praying to the Court for providing medical facilities as are being provided to the State employees. Show cause notices issued by Hon'ble High Court to the Corporation and the State. Reply of the said petition has also been filed by the Corporation.

Now the petitioner has filed rejoinder to the reply of the Corporation and counter reply of which is under preparation.

Matter is placed before the Board for consideration. It is proposed that unless Corporation decides about continuity of Pension Scheme or benefits granted under the existing scheme, no policy for medical facility to retired employees should be considered.

7. Thereafter the Board appears to have rejected the said proposal as would appear from the counter reply filed by RFC. The relevant portion reads as under:

"After exploring the possibilities of medical insurance and not finding the same viable for reasons stated in para 3 of this reply, the matter was placed before Chairman and Managing Director for the Corporation for placing again proposal before the Board for consideration, but the same was deferred for the reasons that Corporation was studying the impact of CPF and Pension liability and its outcome was yet to come. However, the matter was placed again before the Board for consideration on 17.5.2004 and decision taken in the meeting is as under:-

"In continuation to the earlier decision of the Board taken in the meeting dated 30.5.1996 the Board observed that medical reimbursement to retired employees through insurance companies will not be viable. The Board also observed that State Government is operating medical reimbursement policy to retired officials through part contribution from employees. In case of RFC there is no such contribution hence the Board was not inclined to adopt any

new policy in the matter.

Accordingly the Board did not agree to the proposed policy."

8. The learned counsel for RFC further submitted that such facilities or reimbursement available to the State Government Employees, is of no relevance as far as the retired employees of RFC are concerned, and therefore, there is no question of invoking Art. 14 of the Constitution of India.

9. Having heard the parties at length, we are of the view that we cannot issue any mandamus to the respondent Corporation to frame any such scheme, regulation or law to provide such medical facilities or reimbursement of medical expenses to the retired employees of corporation. The claim of such retired employees claiming parity with in-service employees of the corporation also stands on a weak foundation as the two definitely form different classes and, therefore, there is no question of applying equality clause under Art. 14 of the Constitution of India for retired employees vis-a-vis in-service employees of the corporation.

10. The submission of the petitioner that other autonomous corporations who have framed similar scheme

for providing benefit of medical facilities like RSEB (Annex.P-17), Rajasthan Khadi Gramodhyog Ltd. (Annex.P/18), and Rajasthan University (Annex.P-19) etc. and, therefore, nothing prohibits the respondents RFC to frame similar schemes for the retired employees of RFC before us, is also equally devoid of merit because all independent such body corporates are free under the law to frame their own schemes or policies in this regard, and Art. 14 certainly cannot be invoked to provide for such parities.

11. The contention of the petitioner that right of health is a fundamental right and is covered by Art. 21 of the Constitution of India, and therefore, respondent corporation should be directed to provide such facilities or reimbursement, is also equally devoid of merit. While it is true that right of health is covered within the ambit and scope of Art. 21 of the Constitution of India as held by Hon'ble Apex Court in various Judgments, but the question of directing the respondent corporation to frame any such scheme or regulations for this purpose is quite different. The petitioner and his likes are getting pension from the respondent corporation, and the question here is only about providing medical expenses separately for their medical treatment in old age and whether the respondent corporation can be financially held liable to

reimburse such medical expenses or make any provision for such medical facilities or not, is the moot question. The contention of the petitioner tested in the light of this relief, is not acceptable.

12. Therefore, we dismiss this writ petition, and we hold that this court cannot issue any direction in the nature of mandamus or otherwise to the respondent corporation to provide for the medical facilities to the retired employees of respondent corporation or to make reimbursement of medical expenses incurred by them.

13. Before parting , we may however observe that our rejection of this petition will not stand in the way of the respondent corporation, and if the respondent corporation again takes up this issue and considers it appropriate to make any such provision for retired employees of respondent corporation, who had opted for pension scheme, who were 101 in number at the time of filing of this petition, and have fallen to 97 as four employees are said to have already expired to provide such medical facilities to full extent or to some limited extent as may be considered appropriate by the respondent corporation. While we have found no legal foundation to give direction to the respondent corporation to provide such welfare measure for its retired employees, who fell

in this class, our rejection should not be taken as negation in absolute and we leave it free to the respondent corporation to consider providing of such relief to its retired employees in its own wisdom.

(DR.VINEET KOTHARI) J.

(S.N.JHA) , CJ.

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